

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN RICHARDSON,

Petitioner-Appellee,

v

STATE EMPLOYEES RETIREMENT SYSTEM,

Respondent-Appellant.

UNPUBLISHED

April 13, 2010

No. 287779

Washtenaw Circuit Court

LC No. 07-001146-CZ

Before: DAVIS, P.J., and DONOFRIO and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of leave granted the circuit court's order reversing a decision and order of the State Employees Retirement Board (the Board) denying petitioner's request for payment of 100 percent survivorship benefits under MCL 38.31 and awarding petitioner attorney fees and costs. We reverse and reinstate the order of the State Employees Retirement Board.

The quintessential issue in this case involves whether petitioner is entitled to 100 percent survivorship benefits under the State Employees Retirement Act (SERA) MCL 38.1 *et seq.* Petitioner does not dispute that, at the time Eunice Richardson retired in 1985, MCL 38.31 provided:

(a) Prior to the effective date of retirement, but not thereafter, a member who is eligible for retirement, as provided in section 19, may elect to receive his benefit in a retirement allowance payable throughout life, which shall be called a regular retirement allowance; or may elect to receive the actuarial equivalent at that time of his regular retirement allowance in reduced retirement allowance payable throughout life, and nominate a joint beneficiary, in accordance with the provision of option A or B, as follows:

Option A. Upon his death his reduced retirement allowance shall be continued throughout the life of and paid to the person having an insurable interest in his life, that the member nominate by written designation duly executed and filed with the retirement board prior to the effective date of his retirement.

Option B. *Upon his death, 1/2 of his reduced retirement allowance shall be continued throughout the life of and paid to the person having an insurable interest in his life that the member nominated by written designation duly*

executed and filed with the retirement board prior to the effective date of his retirement. If the joint beneficiary named under options A and B predeceases the retirant, that person's benefit shall revert to the regular retirement allowance, effective with the date of the joint beneficiary's death. [Emphasis added.]

There is no dispute that Eunice elected "Option B" and nominated petitioner as her beneficiary when she retired. Shortly thereafter, on October 14, 1985, respondent sent Eunice a letter acknowledging that Eunice elected "Option B" and nominated petitioner as her beneficiary. The letter stated that Eunice would receive an initial monthly retirement benefit of \$338.16 per month and stated:

Under Option B, which you have chosen, \$338.16 will be paid monthly for life to Steven James Richardson should he/she survive you. In the event Steven predeceases you, your monthly benefit will revert to the Regular Service Retirement Allowance of \$416.46 per month.

Following Eunice's death in 2005, petitioner claimed that he was entitled to 100 percent survivorship benefits because the October 14, 1985 letter indicated that, upon Eunice's death, he would receive the same benefit amount as Eunice (i.e. \$338.16). Respondent denied petitioner's request and claimed that the letter contained an error. Under Option B, petitioner was entitled to 50 percent survivorship benefits. Petitioner sought review of respondent's decision before the Board, and the Board ultimately denied petitioner's request for 100 percent survivorship benefits. Petitioner appealed the Board's decision to the circuit court and the circuit court reversed the Board and ordered respondent to pay petitioner 100 percent survivorship benefits with cost of living adjustments. The circuit court also awarded petitioner attorney fees and costs. We granted respondent leave to appeal the circuit court's order.

Respondent contends that the circuit court erred in reversing the Board's decision and order denying petitioner 100 percent survivorship benefits. We agree. We review a circuit court's ruling on an administrative appeal "to determine whether the circuit court applied the correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Davis v State Employees Retirement Bd*, 272 Mich App 151, 153; 725 NW2d 56 (2006) (quotations omitted). A circuit court's legal conclusions are reviewed de novo while its factual findings are reviewed for clear error. *Id.*

A circuit court must uphold a final agency decision if it, "is not contrary to law, is not arbitrary, capricious, or a clear abuse of discretion, and is supported by competent, material and substantial evidence on the whole record." *VanZandt v State Employees Retirement Sys*, 266 Mich App 579, 581; 701 NW2d 214 (2005). An agency decision is arbitrary when it is, "without adequate determining principle[,] . . . fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned." *City of Romulus v Michigan Dep't of Environmental Quality*, 260 Mich App 54, 63; 678 NW2d 444 (2003) (quotations omitted). "Capricious" "has been defined as: Apt to change suddenly; freakish; whimsical; humorsome." *Id.* at 64 (quotations omitted). "Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion." *Id.* at 63. This is "more than a mere scintilla, but less than a preponderance of the evidence." *St Clair Intermediate School Dist v Intermediate Ed Ass'n/Michigan Ed Ass'n*, 218 Mich App 734, 736; 555 NW2d 267 (1996). Under this standard,

where sufficient evidence supports an agency's final decision, "a circuit court may not substitute its judgment for that of the agency even if the court might have reached a different result." *VanZandt*, 266 Mich App at 584.

We conclude that the circuit court misapplied the law and the substantial evidence test in this case. *Davis*, 272 Mich App at 153. A review of the record indicates that the Board applied the proper legal principals and made a reasoned decision that was supported by competent, material, and substantial evidence. *VanZandt*, 266 Mich App at 581.

Initially, the Board properly held that petitioner had the burden of proof to establish by a preponderance of the evidence that he was entitled to 100 percent survivorship benefits under SERA. See *Blue Cross and Blue Shield of Michigan v Governor*, 422 Mich 1, 89; 367 NW2d 1 (1985). In this case, there is no dispute that Eunice elected to retire under Option B and she signed documents attesting to her selection. At the time of Eunice's retirement, petitioner signed an affidavit acknowledging that Eunice elected Option B. Petitioner claimed that neither he nor Eunice knew the difference between Option A and Option B, and that the erroneous letter led him to believe he would receive the same benefit as Eunice. However, "[t]he law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she has not read the agreement." *Clark v DaimlerChrysler Corp*, 268 Mich App 138, 144-145; 706 NW2d 471 (2005). Petitioner failed to introduce any evidence showing that Eunice elected Option B due to fraud, mistake, or coercion. Petitioner claimed that the October 14, 1985 letter sufficed to show that he was entitled to 100 percent beneficiary status; however, Eunice received the letter *after* she elected Option B on September 17, 1985. Thus, she could not have relied on the error contained in the letter to mistakenly select Option B. Instead, evidence showed that Eunice elected Option B on more than one document. And, in signing her Election of Allowance Form, Eunice acknowledged that she had been "furnished with an estimate" of her retirement benefits. In addition, evidence showed that respondent generally sent a retirement booklet to all retirement applicants that explained the difference between Option A and Option B. The October 14, 1985 letter indicated that Eunice selected Option B and the letter did not represent that petitioner was entitled to 100 percent survivorship benefits. Petitioner failed to present any evidence showing that Eunice intended to do anything other than elect Option B. There is nothing in the record showing that respondent represented that petitioner would be awarded 100 percent survivorship benefits under Option A. On this record, a reasoned mind could accept the conclusion that petitioner was not entitled to 100 percent survivorship benefits in this case. *City of Romulus*, 260 Mich App at 63. To the extent that the circuit court reached a contrary conclusion, it improperly substituted its judgment for that of the agency. *VanZandt*, 266 Mich App at 584.

Additionally, we conclude that the Board reached a reasoned decision based on proper law, supported by competent, material, and substantial evidence when it concluded that petitioner was not entitled to relief based on a breach of contract theory. *VanZandt*, 266 Mich App at 581. SERA governs petitioner's rights to survivorship benefits and nothing in the letter purported to change that. Moreover, MCL 38.41 governs "[c]orrection of errors in payment of retirement allowances" and provides:

Should any change or error in the records result in any member, retirant or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, *the retirement board shall*

correct such error and, as far as practicable, shall adjust the payment in such a manner that the actuarial equivalent of the benefit to which such member, retirant or beneficiary was correctly entitled shall be paid. [Emphasis added.]

The Board's conclusion that it was required by this statutory provision to correct the error contained in the letter was not arbitrary and capricious, an abuse of discretion, or unsupported by sufficient evidence. *VanZandt*, 266 Mich App at 581. The statute clearly mandates that the Board correct any errors contained in a beneficiary's retirement records if "practicable." MCL 38.41. Here, correction of the erroneous October 14, 1985 letter was practicable. Eunice did not rely on the erroneous letter in electing Option B because the letter was not written until after she made that election, petitioner acknowledged in his 1985 affidavit that he was a beneficiary under Option B, respondent never represented to petitioner that he was entitled to 100 percent survivorship benefits, and respondent corrected the error before petitioner began receiving his benefit payments. Moreover, we observe that the letter containing the incorrect number did not operate to modify any contract between Eunice and respondent with respect to her retirement benefits. She chose Option B, was paid under that option for approximately 20 years, and nothing supports that respondent intended by way of the letter to modify its agreement with Eunice for option B. *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 372-373; 666 NW2d 251 (2003) ("[A] party alleging . . . modification must establish a mutual intention of the parties to . . . modify the original contract.").

In sum, after reviewing the entire record, we hold that the circuit court misapplied the law and the substantial evidence test because the evidence was such that the Board could reasonably conclude that petitioner was not entitled to 100 percent survivorship benefits in this case. *Davis*, 272 Mich App at 153; *VanZandt*, 266 Mich App at 581.

In light of our resolution of the issue discussed above, we need not address respondent's argument that petitioner waived review of the Board's final decision and order.

Finally, respondent contends that the circuit court erred in awarding petitioner attorney fees and costs. We review a trial court's award of attorney fees and costs for an abuse of discretion. *Reed v Reed*, 265 Mich App 131, 164; 693 NW2d 825 (2005). Generally, attorney fees are not recoverable unless authorized by statute, court rule, or common law exception. *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 37-38; 576 NW2d 641 (1998). In this case, the circuit court abused its discretion in awarding the attorney fees and costs because it did not provide any authority to support the award. *Id.* Moreover, such an award is not permitted where respondent prevails.

We reverse the circuit court's order and reinstate the order of the State Employees Retirement Board.

/s/ Alton T. Davis
/s/ Pat M. Donofrio
/s/ Cynthia Diane Stephens